

STATE OF WASHINGTON



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FILED

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OFFICE OF
INSURANCE COMMISSIONER

In the Matter of

Frederick E. Weatherbee,

Licensee.

)
) No. D 05 – 16
)

) **AMENDMENT OF ORDER**
) **REVOKING LICENSE AND**
) **STATEMENT OF ADDITIONAL**
) **GROUND**

Hearings Unit, DIC
Patricia D. Petersen
Chief Hearing Officer

To: Frederick E. Weatherbee
5815 South Rebecca Street
Spokane, Washington 99223

and

Lawrence R. Small, Attorney at Law
717 West Sprague Avenue, Ste. 1200
Spokane, WA 99201-3505

By Order Revoking License ("Order"), dated February 2, 2005, you were notified that your insurance agent's license was revoked pursuant to RCW 48.17.530 and RCW 48.17.540(2), effective February 22, 2005, subject to your right to demand a hearing. Thereafter, you demanded a hearing.

Your are now notified that the Office of the Insurance Commissioner will rely at the hearing upon the following additional grounds for the revocation of your license and that the Order Revoking License is amended to add the following additional grounds for the revocation of your license:

1. By Summary Order to Cease and Desist and Notice of Intent to Impose Fine No. SDO-034-02, entered April 25, 2002, in the matter entitled "In the Matter of Determining whether there has been a violation of the Securities Act of Washington by: Frederic ("Rocky") Weatherbee, William Loyd Herron, Paul Vose, Brian Denike, Jeff Wordell and Enerphaze Corporation, Respondents", the Washington Department of Financial Institutions found that the Licensee, Weatherbee, illegally sold and offered for sale in Washington Enerphaze stock and stock warrants in violation of the securities registration requirements of RCW 21.20.140, the securities salesperson or broker-dealer requirements of RCW 21.20.040, and the anti-fraud provisions of RCW 21.20.010. This Order and the findings and conclusions set forth therein are incorporated by this reference as though fully set forth herein.

2. By Summary Order to Cease and Desist No. SDO-107-01, entered December 13, 2001, and subsequent Consent Order and Order Vacating SDO-107-01 as to Frederick Weatherbee, entered June 17, 2002, and Consent Order as to Beneficial Services Corporation f/k/a IMTEK Corporation d/b/a Beneficial Assistance, the Washington Department of Financial Institutions found that the Licensee, Weatherbee, illegally sold and offered for sale in Washington viatical settlements in violation of the securities registration requirements of RCW 21.20.140, the securities salesperson and broker-dealer requirements of RCW 21.20.040, and the anti-fraud provisions of RCW 21.20.010. These orders and the findings and conclusions set forth therein are also incorporated by this reference as though fully set forth herein.

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AND STATEMENT OF ADDITIONAL GROUNDS

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3. By Consent Order and Order Vacating SDO-9-02 as to Frederick Weatherbee in the matter entitled "In the Matter of Determining Whether there has been a violation of the Securities Act of Washington by: Alpha Telcom, Inc; American Telecommunications Company, Inc; Kelley W. Abbott; Wilfred Alvarez; Jack Chandler; Daniel Curtins; Thomas Durso; Roy Grady; Hans Lorentzen; Fay L. Moyer; Glen Ottmar; Dirk Peterson; Frederick Weatherbee; their agents and employees", entered June 17, 2002, the State of Washington Department of Financial Institutions incorporated the tentative findings and conclusions set forth in Statement of Charges SDO-9-02 finding that the Licensee, Weatherbee, illegally sold and offered for sale in Washington Alpha Telcom investment contracts in violation of the securities registration requirements of RCW 21.20.140, the securities salesperson and broker-dealer requirements of RCW 21.20.040, and the anti-fraud provisions of RCW 21.20.010. These orders and the findings and conclusions set forth therein are also incorporated by this reference as though fully set forth herein.

4. By his conduct in selling and offering for sale in Washington investments in viatical settlement contracts and Enerphaze stock and stock warrants, as well as his conduct in selling and offering for sale investment contracts in Western Capital Partners III and Alpha Telecom, Inc., Licensee repeatedly violated the securities registration requirements of RCW 21.20.140, the securities salesperson registration requirements of RCW 21.20.040, and the securities anti-fraud requirements of RCW 21.20.010.

5. In addition to the grounds for revocation set forth in the Order Revoking License dated February 2, 2005, the Licensee's above-reference conduct and history of repeated violations of the Securities Act of Washington further demonstrate Licensee's incompetence, dishonesty, and threat to the public.

ENTERED AT TUMWATER, WASHINGTON, this 2nd day of May, 2005

MIKE KREIDLER
Insurance Commissioner

By


JOHN F. HAMJE
Deputy Insurance Commissioner
Consumer Protection Division

Investigator: Tom Talarico

FEB 22 2005

Hearings Unit, OIC
Patricia D. Petersen
Chief Hearing Officer

STATE OF WASHINGTON



OFFICE OF
INSURANCE COMMISSIONER

DECLARATION OF MAILING

I certify under penalty of perjury
Under the laws of the State of
Washington that on the date listed
below, I mailed or caused delivery
of a true copy of this document to

DATED this 2nd day of Feb. 2005
At Tumwater, Washington

Signed Victoria Neysen

In the Matter of

Frederick E. Weatherbee,

Licensee.

) No. D 05 - 16

) ORDER REVOKING LICENSE

To: Frederick E. Weatherbee
5815 South Rebecca Street
Spokane, Washington 99223

IT IS ORDERED AND YOU ARE HEREBY NOTIFIED that your license is **REVOKED**, effective February 22, 2005, pursuant to RCW 48.17.530 and RCW 48.17.540(2).

THIS ORDER IS BASED ON THE FOLLOWING:

The Office of the Insurance Commissioner (OIC) received a written complaint from Annemarie Annerl (Annerl) alleging wrongdoing on the part of Frederick E. Weatherbee (Weatherbee) which initiated the investigation resulting in this Order. Weatherbee holds a resident insurance agent's license issued by the OIC that authorizes him to solicit life, disability, property and casualty insurance. The OIC's investigation revealed violations of the Revised Code of Washington (RCW), and grounds to revoke an insurance agent's license as set forth below:

A. Violations of RCW 48.30.180, Twisting; Grounds to Revoke Insurance Agent's License: RCW 48.17.530(h), Weatherbee has shown himself to be, and is so deemed by the Commissioner, incompetent, or untrustworthy, or a source of injury or loss to the public.

1. Weatherbee, acting as her investment advisor and after recommending that she do so, persuaded Annerl to invest during July and August, 1999, over \$100,000, all of her retirement funds and investments, in Western Capital Partners III, a general partnership that purported to be a "commercial factoring" program. Weatherbee induced Annerl to terminate or surrender three annuities that she owned for the purpose of funding this investment by making the following misrepresentations:

- a. that for the first five years of the program, the average return on investment is 16% and for the last five years the return would be in the mid-30% range.
- b. that the program was a good, low-risk option.
- c. that the risk was very low.
- d. that the factoring transactions were insured or guaranteed so if the accounts

receivable were not paid, the insurance company would pay them and take them over.

- e. that the insurance company underwriting was very strict.
- f. that the program was very secure.
- g. that the track record of the program was exemplary.
- h. that the returns were good.
- i. that the program was very lucrative.
- j. that after ten years, investors would receive 340 to 400% return on investment.
- k. that there was a 90-day exit clause for non-performance.
- l. that there was no downside to the program.

In September or October 2003, Annerl received notification that her investment in Western Capital Partners III was worthless.

2. Weatherbee, after recommending that he do so, persuaded Donald C. Sams (Sams) to invest during October and November, 1999, approximately \$80,000, a portion of his retirement savings, in Western Capital Partners III. Weatherbee induced Sams to terminate or surrender two annuities that he owned for the purpose of funding this investment by making the following misrepresentations:

- a. that he would realize by the end of the ten-year period of investment 30% return on the investment.
- b. that there was little risk involved in the investment.
- c. that the investment was low risk.
- d. that the language contained in the prospectus indicating a "high degree of risk" in the investment was included merely because it was required language but that there was little risk in the investment.
- e. that Sams' original investment would be intact at the end of the investment period.

Subsequently, Sams received notification that his investment in Western Capital Partners III was worthless.

B. Grounds to Revoke Insurance Agent's License: RCW 48.17.530(h), Weatherbee has shown himself to be, and is so deemed by the Commissioner, incompetent, or untrustworthy, or a source of injury or loss to the public.

1. During June and July 1999, Weatherbee substantially prepared virtually all of the documents that were to be submitted in connection with Annerl's investment in Western Capital Partners III. These documents included transfer authorizations and instructions to the custodians of all of Annerl's annuity accounts, an application to open a self-directed investment account with Pensco Pension Services, Inc., and subscription agreements and suitability questionnaires to purchase the Western Capital Partners III investment. In most if not all instances, Weatherbee submitted these documents to Annerl in blank for her signature, assuring her that he would properly complete them and submit them on her behalf. Some of these documents were properly completed, some were not. For example, in completing the subscription agreements for the purchase of the Western Capital Partners III investment, Weatherbee grossly exaggerated Annerl's annual income, net worth, employment history, and investment experience for the purpose of creating the appearance that she was qualified to make the investment when, in fact, she was not. In at least one instance, Weatherbee appears to have signed Annerl's name to an instrument without her knowledge or consent.

2. Weatherbee persuaded Lawrence Gary DeVore (DeVore) to invest during January and November 2000, approximately \$10,000, a portion of his retirement savings, in Alpha Telcom, Inc., by purchase of an interest in pay telephone equipment. Weatherbee induced DeVore to liquidate retirement accounts for the purpose of funding this investment by making the following misrepresentations:

- a. that this was a non- or low risk type of investment.
- b. that it was guaranteed that his original investment money would be returned within three years.
- c. that the worst risk was that he would receive less than the promised monthly residual payments but that he would still receive the original investment back at the end of the time frame in a lump sum.
- d. that the program brought strong returns; typically 14% or more annually.
- e. that it was a safe investment with no market risk.

Subsequently, DeVore received notification that Alpha Telcom, Inc. was bankrupt and that his investment was worthless.

3. Weatherbee persuaded DeVore to invest during January 2000, approximately \$100,000, a portion of his retirement savings, in Western Capital Partners III. Weatherbee induced DeVore to liquidate retirement accounts for the purpose of funding this investment by

making the following misrepresentations:

- a. that this was a non- or low risk type of investment.
- b. that it was guaranteed that his original investment money would be returned within ten years.
- c. that the worst risk was that he would receive less than the promised monthly residual payments but that he would still receive the original investment back at the end of the time frame in a lump sum.
- d. that his investment would be extremely safe and backed by an insurance program that permitted return of the original investment at the end of the ten-year period.
- e. that he should not worry about the language contained in the prospectus indicating a "high degree of risk" in the investment as it was just a basic standard type of administrative requirement that had to be included and that he would get his money back and, even if he were not paid the exact amount quoted, it may be very close or perhaps even better than what Weatherbee had written.
- f. that at the end of the ten-year investment period, his investment would have grown 350% or 380%; these minimum returns were secured by contract.
- g. that if the investment did not perform to these levels, there was a 90-day exit clause.
- h. that he had voting rights in the program.

In September or October 2003, DeVore received notification that his investment in Western Capital Partners III was worthless.

By reason of your conduct, you have shown yourself to be and are so deemed by the commissioner, incompetent, and untrustworthy, and a source of injury and loss to the public and not qualified to be an insurance agent in the State of Washington. Accordingly, your license is revoked pursuant to RCW 48.17.530(1) (f), and (h).

IT IS FURTHER ORDERED that you return your insurance agent's license certificate to the Commissioner on or before the effective date of the revocation of your license, as required by RCW 48.17.530(4).

NOTICE CONCERNING YOUR RIGHT TO A HEARING. Please note that a detailed summary of your right to contest this Order is attached. Briefly, if you are aggrieved by this Order, RCW 48.04.010 permits you to demand a hearing. Pursuant to that statute and others: You must demand a hearing, in writing, within 90 days after the date of this Order,

which is the day it was mailed to you, or you will waive your right to a hearing. Your demand for a hearing must specify briefly the reasons why you think this Order should be changed. If your demand for a hearing is received by the Commissioner before February 22, 2005, then the revocation will be stayed (postponed) pending the hearing, pursuant to RCW 48.04.020. Upon receipt of your demand for hearing, you will be contacted by an assistant of the Chief Hearing Officer to schedule a teleconference with you and the Insurance Commissioner's Office to discuss the hearing and the procedures to be followed.

Please send any demand for hearing to Insurance Commissioner, attention Scott Jarvis, Deputy Insurance Commissioner, Office of the Insurance Commissioner, P.O. Box 40257, Olympia, WA 98504-0257.

ENTERED AT TUMWATER, WASHINGTON, this 2nd day of February, 2005.

MIKE KREIDLER
Insurance Commissioner

By 
SCOTT JARVIS
Deputy Commissioner

Investigator: Tom Talarico

NOTICE OF YOUR RIGHT TO A HEARING

You have the right to demand a hearing to contest this Order. During this hearing, you can present your argument that the Order should not have been entered for legal and/or factual reasons and/or to explain the circumstances surrounding the activities which are the subject of this Order. You may be represented by an attorney if you wish, although in some hearings before this agency parties do choose to represent themselves without an attorney.

Your Demand for Hearing should be sent to Scott Jarvis, Deputy Insurance Commissioner, Office of the Insurance Commissioner, P.O. Box 40257, Olympia, WA 98504-0257, and must briefly state how you are harmed by this Order and why you disagree with it. You will then be notified both by telephone and in writing of the time and place of your hearing. If you have questions concerning filing a Demand for Hearing or the hearing process, please telephone the Hearings Unit, Office of the Insurance Commissioner, at 360/725-7002.

Your Demand for Hearing must be made within 90 days after the date of this Order, which is the date of mailing, or your Demand will be invalid and this Order will stand. If your Demand for Hearing is received before the effective date of this Order, the penalties contained in the Order will be stayed (postponed) until after your hearing.

It is important to know that if you demand a hearing, you will have two options for how it will be handled:

Option 1: Unless you specifically request Option 2, your hearing will be presided over by an administrative law judge from the Office of the Insurance Commissioner. Under this option, upon receipt of your Demand for Hearing, the Insurance Commissioner may refer the case to an administrative law judge. The administrative law judge is an individual who has not had any involvement with this case. The administrative law judge will hear and make the final decision in the case without any communication, input or review by the Insurance Commissioner or staff or any other individual who has knowledge of the case. This administrative law judge's final decision may uphold or reverse the Commissioner's action or may instead impose any penalties which are less than those contained in the Order.

Option 2: If you elect, your hearing will be presided over by an administrative law judge from the Office of Administrative Hearings. That administrative law judge will issue an initial or recommended decision which will then be sent to the Insurance Commissioner. The Insurance Commissioner, or his designee, will review the initial decision and make the final decision. The Insurance Commissioner's final decision in the case may uphold, reverse or modify the initial decision, thereby changing the penalty which is recommended in the initial decision. In writing the final decision, the Insurance Commissioner is not bound by the findings of facts or conclusions of law which were made in the initial decision.